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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.934 OF 2002

Vilas Santu Gangode)..APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mrs.R.C. Dhru, Appointed Advocate, for the Appellant.

Smt.V.R. Bhosale, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, AND SMT.NISHITA MHATRE, JJ.

DATED: 6TH OCTOBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The accused has been convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment. The prosecution alleges that the accused has killed his wife Ushabai by pouring kerosene over her and setting her ablaze. Ushabai suffered 90% burn injuries and ultimately succumbed to these injuries in Nashik Civil Hospital on 22nd July 2001. The prosecution alleges that burning his wife was the ultimate act of cruelty of the accused. Throughout their married life, the accused used to harass his wife and ill-treat her. He has, therefore, been charged and convicted under Section 498-A of the Indian Penal Code.

2. According to the prosecution, the accused and Ushabai, the victim, were married for about seven to eight years. The accused was addicted to alcohol ever since he got married. He often abused and ill-treated Ushabai under the influence of liquor. The accused also demanded money from his wife for his drinking bouts. Ushabai had complained of the harassment to her mother. She had also issued a notice to the accused seeking a divorce. Several letters and notices were exchanged in respect of the divorce. About one and half months prior to the incident, the accused went to his mother-in-law's house and assured her that he would refrain from drinking alcohol and ill-treating Ushabai. Ushabai, who was then at her mother's place, went back with the accused to her matrimonial home. The prosecution alleges that on the day of the incident i.e. on 20th July 2001, the accused consumed alcohol throughout the day. He returned home that evening at around 7.30 p.m. in an inebriated state. He demanded Rs.10/- from Ushabai for purchasing more liquor. As this demand was not met, the accused was enraged. He doused his wife with kerosene from the stove that was in the kitchen and set her on fire. The victim started shrieking in pain, came out of the house on the platform outside the house, when the accused realising his folly, tried to put out the fire by using gunny bags. He then sought the help

of the Police Patil and secured a jeep in order to take his burnt wife to the Rural Hospital. The Medical Officer who was present at the hospital recorded the case history, when the victim informed him that her husband had set her on fire after pouring kerosene over her. He informed the police who arrived soon thereafter. The statement of the victim was recorded where she implicated the accused. This statement was treated as the first information report. Since the facilities available in the Rural Hospital were inadequate for treating the victim, she was transferred to Nashik Civil Hospital. Her dying declaration was recorded by the Special Executive Magistrate at about 7.00 a.m. on 22nd July 2001. The victim passed away that evening. The body of the victim was examined and a post mortem report was made.

3. The accused was arrested on 21st July 2001. At the time of his arrest, it was found that his clothes were smelling of kerosene. Other articles at the scene of offence were similarly smelling of kerosene. These articles were attached and sent for chemical analysis. A panchanama was prepared and after investigations were complete, the accused was arraigned for having committed the murder of his wife.

4. We have scrutinised the evidence on record and

reappreciated the same. We have also perused the impugned judgment and find that we are unable to concur with the findings of the Sessions Court convicting the accused Section 302 of the Indian Penal Code.

5. The prosecution has examined the Doctor who was present when the victim was admitted into the Rural Hospital as PW1. He has stated that the patient was conscious and able to give a statement. This witness has also stated that the police arrived at the hospital when he informed them that the patient who he had admitted had given the history of burn injuries being caused by her husband by pouring kerosene over her and setting her on fire. The police arrived and recorded the statement of the victim which is at Exhibit 8. Prior to recording the statement, he had found that the victim was conscious and able to make a statement. He has endorsed the statement recorded by the police and has proved the same which is at Exhibit 8. This witness has stated that the victim had suffered 90% burn injuries. This statement was recorded at about 10.30 p.m. on 20th July 2001.

6. Another statement of the victim has been recorded by PW3, the Special Executive Magistrate. This statement is at Exhibit 13. PW3 has proved the statement. He has stated that the statement was

recorded only after he ascertained from the Doctor on duty, Dr.Wagh that the victim was conscious and able to make a statement. This dying declaration of the victim at Exhibit 13 which is recorded on 21st July 2001 has been endorsed by the Doctor, both before starting recording of the statement and after it was recorded.

7. PW6, who is the mother of the victim, has been examined by the prosecution to prove the ill-treatment of her daughter by the accused. She has heard the victim say that the accused was responsible for the burns suffered by her. She has also spoken about the addiction of alcohol which the accused suffered from.

8. Thus, there are before us, two declarations made by the victim which have been recorded at Exhibit 8 and Exhibit 13. There is also an oral declaration made by the victim to her mother when she visited her daughter in Nashik Civil Hospital. All these declarations are consistent with the history reported by the victim to PW1. The victim has stated that the accused had, on the relevant day, consumed alcohol for the entire day. When he returned home in the evening, he demanded Rs.10/- from her. She was unable to fulfil this demand. Irked by this fact, the accused doused her with kerosene and set her on fire. On hearing her shouts of pain, the accused realised his folly and put out the fire with

gunny bags. He admitted her to hospital immediately thereafter. In such circumstances, taking into consideration the declarations before us, we have no hesitation in accepting and finding that the death of the victim was homicidal and that it was the accused who was responsible for the victim's death. In fact, the post mortem report which has been proved by PW2 indicates that the death of the victim was homicidal.

9. PW4 is the panch witness who was examined by the prosecution. He has deposed regarding the arrest panchanama, the inquest panchanama and the spot panchanama. This witness has spoken about the burnt pieces of cloth, the empty stove, a currency note of Rs.10/- and a match box being seized. He has stated that the burnt pieces of cloth and the match box was lying on the platform outside the house. Used and unused match sticks were also found.

10. The other witness examined by the prosecution PW5 is the person whose jeep was used for taking the victim to hospital. However, this witness has turned hostile and, therefore, his evidence is not helpful to the prosecution.

11. In our opinion, the prosecution has been able to establish that Ushabai was a victim of ill-treatment and

harassment at the hands of her husband, the accused. The prosecution has proved that she met with a homicidal death. It has further proved, on the basis of the dying declarations, the complicity of the accused who had set the victim on fire. Therefore, the accused is guilty of culpable homicide. However, the question which remains is whether the accused is guilty of having committed culpable homicide amounting to murder. In our opinion, given the fact that the accused, as declared by the victim, was on a drunken binge and had been in an inebriated state throughout the day as also when he returned home in the evening, he could not have had the intention to commit a murder. Rather, he could not have been capable in that frame of mind; of having an intention to commit the murder of his wife. However, the injury that he has caused by burning his wife is such that has caused her death. We are, therefore, of the view that the accused is liable to be convicted under Section 304 Part-I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years.

12. Accordingly, Appeal partly allowed. Conviction and sentence under Section 302 of the Indian Penal Code set aside. Instead, the accused is convicted under Section 304 Part-I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years.

13. Appeal accordingly disposed off.

(V.G. PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)